

GUEST ESSAY

Rachel Maddow: What Worries Me Most About Election Night

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By Rachel Maddow

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On Dec. 1, 1960, the far-right preacher and racist demagogue Gerald L.K. Smith sent out a fund-raising appeal, headlined with a shocking claim in red type across the top: “HOLD YOUR BREATH: KENNEDY MAY HAVE LOST.”

The 1960 election had indeed been close, but the Democrat, John F. Kennedy, had prevailed, and his Republican opponent, Richard M. Nixon, had congratulated Kennedy on election night, over shouted protests from his supporters.

Three weeks later, Smith, the leader of what he called the Christian Nationalist Crusade, was telling his followers it was possible to reverse that result.

If Smith’s followers would only send him money, he would continue what he called his “subtle campaign of pressure” to persuade governors in states won by Kennedy that they should refuse to send Kennedy electors to Washington for the Electoral College count.

“This,” Smith promised, “could turn out to be the most shocking and sensational Electoral College vote in history.”

It was not. There were no shenanigans in the Electoral College count. Kennedy received 303 votes to Nixon’s 219, and the transition of power proceeded peacefully.

Today, it may be worth remembering Smith’s nut-ball campaign to overturn the 1960 election if only to see how far we’ve sunk. You used to have to get out into the far-flung wilds of American political life before you’d find people trying to persuade state or local officials to monkey-wrench the Electoral College by refusing to send their states’ real results to Washington for the Electoral College count. Not anymore.

Since Donald Trump and Ronna McDaniel, the then-chair of the Republican National

Committee, phoned local officials in Michigan in November 2020 to encourage them not to certify vote totals, Republicans have quietly seeded county and state election boards with eager allies. Election boards across the country now include Republican officials who have not only propounded Mr. Trump's lies about the last presidential election being "stolen," they have tested how far they can go in denying the certification of the vote.

Republicans tried this ploy more than two dozen times in at least eight states since 2020. Two refusenik Republican election board members were indicted in Cochise County, Ariz. That case is pending. Two others were removed from their positions in Surry County, N.C. In New Mexico, Pennsylvania and Nevada, Republican officials who delayed or refused to certify the votes ultimately relented under legal pressure.

But in Georgia, the State Election Board approved a rule this month that gives election officials in each of the state's 159 counties the option to delay or refuse certification in order to make a "reasonable inquiry" into the results. What counts as a "reasonable inquiry?" The new rule does not say.

Because Georgia law holds that election boards "shall" certify results within a week of the election, this rule almost certainly will face legal challenges. But in a state where Republicans have delayed or refused certification at least seven times since 2020 — more than in any other state — the rule injects a new layer of murk into the legal waters less than 100 days before the election.

On Monday, the board approved another revision to the rules that affords members of county election boards an additional option for delaying or refusing certification. The rule allows local board members to demand "all election-related documentation" before certifying the results.

Imagine an election night this November in which the two parties are trading swing-state victories. The Democrats capture Nevada, while the Republicans take Arizona. The Republicans win the big prize of Pennsylvania, while the Democrats top them in Wisconsin and Michigan. The nation is waiting on Georgia. If Georgia goes red, it's President Trump; if Georgia goes blue, it's President Harris.

Then, local news headlines start to circulate. There are reports of unspecified "problems" in the vote in Fulton County. And in Gwinnett County. And in DeKalb, Coffee and Spalding Counties. Republican officials are refusing to certify the results in their counties. They say they are making "reasonable inquiries."

As legal challenges wend through the courts, a wave of disinformation, confusion and propaganda swells, fueled by unproven claims that something is amiss in these Georgia

counties, and also by similar noise — and possibly also certification refusals — in Michigan, Pennsylvania, New Mexico and Nevada. (All have seen local Republicans try the certification refusal ruse since 2020.)

The point of these certification refusals may not be to falsify or flip a result, but simply to prevent the emergence of one.

Under federal law, the executive of each state — either the governor or another designated official — has until Dec. 11 to send official, certified state results to Washington for the Electoral College count. But if that deadline is not met, then what? The law provides for an expedited appeals process in the courts that should be resolved before the Electoral College meets on Dec. 17. How the courts rule will be considered conclusive.

If, at the end of this process, one or more states still do not produce results, the number of electoral votes required to win a majority — and therefore the presidency — would be reduced accordingly. In the above-described hypothetical, Georgia refusing to finalize its results would reduce the total number of electoral votes needed to win to 262, from 270. Republicans would win with 265 electoral votes, to the Democrats' 257.

Our democratic system is not invincible, but it is strong. Certification of election results is a ministerial responsibility that is not discretionary. Legitimate election challenges are handled with recounts and litigation, not by individual election board members. There is no loophole that allows bad-faith officials to so flummox the electoral system that they take the choice of the next president away from voters.

But in the past three and a half years, the ad hoc certification ploys that failed to flip the last presidential election to Mr. Trump have been professionalized and systematized by Republican officials and their allies. A recent report in *The Times* quoted an official with the conservative Heritage Foundation saying that “the conditions” in the country are now such that “most reasonable policymakers and officials cannot in good conscience certify an election.” Michael Whatley, the chairman of the Republican National Committee, has declined to answer when asked if the party intends to try to block vote certifications.

A contrivance like this is as nutty today as it was when Gerald L.K. Smith tried to make a version of it seem plausible in 1960. But this year, the firepower being brought to bear on the issue by the Republican Party is much more than a “subtle campaign of pressure” from a direct-mail grifter.

Opponents no doubt will fight any certification denials in the courts. Those efforts are important, and every state should be shoring up its own legal and electoral system now to prepare for, deter and defend against any effort to sabotage certification. But stopping

such subterfuge also depends on an informed public that refuses to let false narratives take hold.

A cleareyed look at Republicans' handling of the administration of elections since Mr. Trump's effort to overthrow the last election should prepare us: Refusals to certify results should not necessarily be seen as indicating real electoral problems; they are more likely part of a bad-faith strategy to mess with the democratic process.

Now is the time to get to know your local election board, especially if you live in a place where election denialism has taken hold, and where certification refusals may be coming. Public awareness and vigilance can make a difference. No one should be surprised when certification refusals happen or when they are then exploited to try to maximize chaos and upset.

After all, the Republican nominee this year is no Richard Nixon.

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A correction was made on Aug. 20, 2024: An earlier version of this article misstated the rules in a scenario in which states failed to send electoral votes to the Electoral College. In such a case, the number of electoral votes required to win a majority, and therefore the presidency, would be reduced by the number of withheld votes. The outcome of the election would not be decided by a vote of the state delegations in the House of Representatives.

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